



## Regulatory Newsflash

### ESAS joint opinion - AMLD IV

### Introduction

On 20 February the European Supervisory Authorities (ESAs) released their [joint opinion on the risks of money laundering \(ML\) and terrorist financing \(TF\) affecting the Union's financial sector](#). The Joint Committee of ESAs, formed by the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions authority (EIOPA), was required to do so by article 6 (5) of Directive (EU) 2015/849 (Fourth anti-money laundering Directive, further AMLD IV).

The joint opinion informs on the supranational risk assessment, the ESAs' work on fostering supervisory convergence and a level playing field in the area of anti-money laundering and countering- the financing of terrorism (AML/CFT) and Member States' competent authorities in their application of the risk-based approach to AML/CFT supervision.

### Overview

The joint opinion finds that an effective risk-based approach, as required by AMLD IV - in line with the FATF standards -, depends on several factors such as timely access to relevant information, a common understanding of ML/TF risk factors, qualified staff, etc. A consistent interpretation of relevant Union Law by national authorities, as well as a coherent approach to supervising and assessing the adequacy of firms' AML/CFT efforts are also influencing the effectiveness of a risk-based approach.

According to ESAs, the main ML/TF risks affecting the Union's financial sector arise from risks associated with firms' AML/CTF systems and controls, risks associated with uneven transposition and

regulatory arbitrage, terrorist financing risk and the cost of compliance.

## Risk associated with firms' AML/CTF systems and controls

The ESAs consider that one of the problems exist in key areas such as firms' understanding of the ML/TF risk, which results in ineffective and inadequate systems and controls. Competent authorities identified shortcomings in relation to the enterprise (or business) wide risk assessment regarding ML/TF (EWRA) to be performed by each firm as well as firms' assessment on individual business relationships regarding ML/TF risks.

As AMLD IV requires a risk-based approach, the EWRA is an essential condition to provide a firm with a clear view and understanding of the ML/TF risks it's exposed to. Based on the result of the EWRA a firm should be able to adopt policies and procedures that are well-considered, risk based and effective in managing ML/TF risk factors.

*If you are interested in a further discussion on the EWRA methodology, you can contact us.*

## Risks associated with uneven transposition and regulatory arbitrage

The ESAs consider that the minimum harmonisation nature of relevant Directives and the significant differences in the competent authorities' approaches to AML/CFT supervision, including in relation to the resourcing of specialist AML/CFT functions and the way AML/CFT oversight is conducted, causes the risk that firms could take advantage of the significant differences.

Internal market rules, in particular passporting rights and the free provision of services could lead firms to provide their services from Member States with AML/CFT regimes they perceive as less demanding.

## Terrorist financing risk

Another risk arises from the lack of access to intelligence from law enforcement that would help identify terrorist funds before attacks have been carried out. The fact that terrorist funds, in absence of clear TF risk indicators or specific intelligence from law enforcement, can appear legitimate and inoffensive, and, make it difficult to intervene prior to attacks.

The challenge gets even bigger with customers who have legitimate reasons for being unable to produce traditional types of identity documentation, such as asylum seekers.

## Cost of compliance

Firms are confronted with a higher cost of compliance (including AML/CFT), both on effort as on recruiting qualified staff.

There are suggestions that the cost of compliance may cause firms to withdraw from offering services to higher-risk customers that are not sufficiently profitable. Hereby another risk arises, namely that customers who lost access to the financial system as a results of "de-risking" might use informal payment channels instead, away from effective AML/CFT controls and oversight.

*If you are interested in a further discussion on Compliance cost optimization, you can contact us.*

# Conclusion

The ESAs believe that the ML/TF risks highlighted in this Joint Opinion mean that more has to be done to ensure that the Union's AML/CFT defenses are effective. This includes moving to a risk based AML/CFT approach, starting from an adequate EWRA and requiring a higher level of specialized ML/TF risk awareness and management expertise that does not yet exist in all firms.

Several initiatives have been taken at regulatory level, such as the [amendments to AMLD IV \(AMLD V\)](#), ESAs initiatives to improve the cooperation of competent authorities and the [Joint Guidelines on risk factors and simplified and enhanced customer due diligence](#).

However ESAs believe that further steps still need to be taken to improve the management of ML/TF risks:

- Enhanced cooperation between the financial intelligence units (FIU) and firms on the timely access to relevant information;
- Increased awareness of supervisory expectation (e.g. providing guidance) by the competent authorities;
- Collection of AML/CFT supervisory data by the competent authorities in a more consistent way to facilitate comparisons and track progress;
- Further thought needed by the Commission, the Union legislators and the ESAs to identify ways in which the ESAs, and competent authorities, can ensure that implementation of the Union's AML/CFT law and the ESAs' AML/CFT guidelines is done in an effective and consistent way across all Member States.

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## Contact

For further information with respect to this subject, please contact [Caroline Veris](#) , [Edwin Somers](#), [Inneke Geyskens-Borgions](#) or [Debbie Van Waes](#).

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